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Court of Appeals of New York.

NATH. H. GATES v. WM. BEECHER.

In order to charge the endorser of a joint note, demand must be made on all the makers.

The note of partners does not come within this rule, as they are but one maker in contemplation of law, and a demand on any of them is a sufficient demand on all.

After a dissolution of a partnership by bankruptcy or otherwise, the powers of the several partners to affect each other by new contracts ceases, but each retains the power to settle up the former business, and hence the dishonor of a note by either partner is sufficient even after dissolution to charge an endorser.

The notice of dishonor to an endorser is only required to be such as will reasonably apprise him of the particular paper on which he is to be charged. Therefore, in the absence of evidence to show that the endorser was misled, or that there was any other note to which it might apply, a notice which gave the maker's name, the date and amount of the note, the date when, the place where and the person of whom demand was made and the refusal to pay, was held sufficient, although it did not expressly state the time when the note came due.

THIS was an action upon a promissory note, against the endorser. The facts are sufficiently indicated in the opinion.

F. W. Hubbard, for appellant Beecher.

H. J. Cookingham, for Gates.

The opinion of the court was delivered by

FOLGER, J.—No place of payment was named in the note. In such case, demand of payment at the usual place of business of the maker, though he be absent, is sufficient; or at his residence, or of him in person: *Holtz v. Boppe*, 37 N. Y. 634. And where such a note is made by a partnership, a demand of one of the partners in person, or a demand at the usual place of business of the partnership, is sufficient: *Story on Prom. Notes*, § 239.

The makers of the note in suit were partners, and it was made by them as such in their partnership name; demand of payment was made on the proper day of one of them in person, after the notary had on the same day gone to the last usual place of business of the partnership, for the purpose of making demand there, and found no one of the firm. The name of the firm was Bassett, Beecher & Co., and on the question being asked Bassett, when a witness, "When did Bassett, Beecher & Co. stop business?" he replied, "They were thrown into bankruptcy in June 1871." I think that we may infer from this that by proceedings in the

Bankrupt Court the partnership was declared bankrupt, and its affairs taken charge of by the officers of the law. The partners had separated, though there was no formal dissolution of their partnership by them. But bankruptcy of one member, or of all the members of a firm, works a dissolution of the copartnership: Story on Part., § 313. On this state of facts and the law, it is contended by the learned counsel for the appellant that the demand for payment of the note should have been made of each of the former partners. He cites no authority for his position. I have been unable to find any. If by the dissolution of the partnership by bankruptcy, and the separation of the partners, they must thereafter be treated as joint makers who are not partners, I think that the force of the authorities is that to charge an endorser of their note a demand must be made of each of them, save where the other circumstances are such as to excuse a demand. For to charge the endorser of the note of joint makers not partners, demand must be made on each. It was so held in *Union Bank v. Willis*, 8 Metc. 504, which case was approved in *Arnold v. Dresser*, 8 Allen 435. In *Willis v. Green*, 5 Hill 532, NELSON, C. J., said it was so settled. *Harris v. Clark*, 10 Ohio 5, is to the contrary; but that case is limited in *Greenough v. Smead*, 3 Ohio St. 415. It is seen, therefore, that there is a distinction taken between the case of a note of joint makers who are not partners, and a note of partners, who are still partners at the maturity of the note. That distinction rests upon the fact that partners are but one person in legal contemplation; that each partner acting in such capacity is not only capable of performing what all can do, and of receiving and paying out that which belongs to all, but by such acts necessarily binds them all; that, as incident to such joint relations, all of the partners are affected by the knowledge of one. These things do not pertain to the relation of joint makers who are not partners. Hence, while a demand of one partner is equivalent to a demand of all, a demand of one of joint makers not partners, is not: 8 Metc., *supra*. And so a demand upon one partner is sufficient, because he represents the firm, and a dishonor by one is a dishonor by all, and each is presumed to have authority to act for the others; while in the case of a note of joint makers not partners, the endorser has a right to rely upon the responsibility of all and each, and may insist upon a dishonor by each: Story on Prom. Notes, § 255. So that the inquiry seems

to be, whether a dissolution of a partnership, effected by the bankruptcy thereof, has so far changed the relations of the members of it as that the act or knowledge of one does not affect all the rest. Undoubtedly, a dissolution of a partnership, however brought about, puts an end to certain of the joint powers and authority of all the partners. Perhaps it may be said that no one of the partners can do any act in any manner inconsistent with the primary duty of winding up the whole concerns of the copartnership. This is emphatically the case when the dissolution has been wrought by the bankruptcy of the firm, for then the effects thereof have passed into the control of the court, and all payments therefrom or chargeable thereon, are to be in the direction of the court, or according to its rules and practice. The principle on which a partner, during the existence of the partnership, may by his act bind his copartners, is that which governs the relation of agent and principal. The power of an agent to bind his principal ceases when the agency is ended; so that even a payment by a former agent of a valid debt against his former principal, gives him no right against the latter. The principle has not, however, been carried so far in the case of a copartner. His relations with the other members of the firm have not been entirely severed. He may from his own means pay a valid subsisting debt against the copartnership, and have the right to claim an allowance therefor on the settlement of the affairs, or contribution from the others: *Major v. Hawkes*, 12 Ill. 298. And the general statement has been made by a text-writer of repute, that every act of administration which is necessary for winding up the concern may be effectually done by one partner, and the rest be bound; 2 Bell Comm. Bk. 7, c. 2, p. 643, 5th ed.; and the author expressly includes in this a case of dissolution by bankruptcy, though it is apparent that the property of a bankrupt concern may not be meddled with by one of its former members. But it is clear that the relations of the individual members of the firm are not by a dissolution thereof so completely severed as that no act of one can have any effect upon the others: *Robbins v. Fuller*, 24 N. Y. 570. Each and all have still an interest in the settlement of the affairs of the firm, in the payment of its debts, and the adjustment of the liability of each to it and to each other, and in the just division of any surplus. Though the copartnership be insolvent, as in this case, and it be declared bankrupt, the members individually may

be solvent and liable to be affected by the final result of the bankrupt proceedings. And so there does, after a dissolution, still continue such a common interest in past transactions and in the present and future legitimate consequences therefrom, as that a joint power and authority in relation thereto continues; and while, after dissolution, no member of the late firm can by his act create a new liability against his former copartners, 24 N. Y., *supra*; or bind them to an alleged liability, *Hackley v. Patrick*, 3 J. R. 536; or revive an extinct one, *Van Kenren v. Parmelee*, 2 N. Y. 525, he may do some acts which shall affect and be binding upon them, when such acts are confined to matters in which they all still have a common interest and are under a common liability. Thus it has been held that one who was once a member of a dissolved partnership, which in its lifetime had endorsed a note in the firm-name, might after dissolution waive demand of payment and notice of non-payment: *Darling v. March*, 22 Maine 184; which decision was put upon the principle that, though dissolution revoked all power to make a new contract, it did not revoke the authority to arrange those before created and yet subsisting. And it being so, that the act of one of former partners, in relation to a valid subsisting liability of the late firm, does affect the others, and is taken as their act, and his knowledge thereof as their knowledge, there seems no reason why the refusal of one to pay on demand a note of the partnership should not be deemed the refusal of all, and all be chargeable therewith. And then a demand of payment made to one is a demand of payment made to all, and is sufficient upon which to give notice of non-payment to their endorser. And further in aid of this idea, it is to be remembered that the contract of the endorser of the promissory note of a copartnership is that he will pay if the copartnership does not, while that of the endorser of the note of joint makers is that he will pay if neither of them does. One joint maker not a partner of the other may not be able to speak for the other as to his ability or disposition to protect his promise and to save his endorser from liability, while one partner, though the firm has been dissolved, is supposed to know and care as much as the others of its ability and willingness in those respects. Again, the purpose of demand and notice to the endorser is that he, being made knowing of the failure to pay by the copartnership, may be put at once on his guard, to save himself, if may be, from loss. This end

is achieved when one of former partners has refused to pay, as well as when all have. Taking all the reasons for the distinction made by the law between the case of a note of joint makers who are partners, and of that of joint makers who are not partners, and all the reasons for requiring a demand of payment of the maker, and notice thereof and of refusal to the endorser, in order to charge him, we are of the opinion, that the rule that a demand of one copartner is sufficient, applies as well where the partnership has been dissolved as where it has not. It follows that the demand of payment in this case was sufficient. We find that this view is sustained in brief opinions in *Crowley v. Barry*, 4 Gill 194; *Brown v. Tanner*, 15 Ala. 832.

It is contended by the appellant that the paper sent to him by mail, intended as a notice of demand and refusal of payment of the note, and of protest therefor, was insufficient for that purpose. It is positive and explicit enough as to the fact of the presentment of the note for payment, as to the day on which, the place where, and the person to whom, the presentment was made; as to the refusal to pay; as to the protest for non-payment against the maker and endorser. The only direct description it gives of the note is that it was a note of Bassett, Beecher & Co., dated May 31st 1870, for \$800. It contained the name of the makers of the note, which is the most descriptive feature of a note; so says DENIO, J., in *Home Ins. Co. v. Green*, 19 N. Y. 518. It did not mention the time of payment otherwise than as it might possibly be inferred from the naming of the day on which it was alleged to have been presented for payment. But the absence of the statement of the time of payment, even at the same time with the absence of statement of the date and amount, there being no evidence of any other note to which the notice could apply, has been held not a fatal omission: *Shelton v. Braithwaite*, 7 Mees. & Wels. 436. So the omission of the date and time of payment was held not fatal: *Youngs v. Kee*, 12 N. Y. 551. Indeed the rule is no more stringent than that the notice must reasonably apprise the party of the particular paper on which he is sought to be charged, and no precise form is required: 19 N. Y., *supra*. A mistake or misdescription of the note will not render the notice insufficient, if it do not mislead the endorser, and if it so designates and distinguishes the note as to leave no reasonable doubt in the mind of the endorser what note was intended, and that it was

the same with the note in suit: *Gilbert v. Dennis*, 3 Metc. 495, per SHAW, C. J. In the absence of any evidence tending to show that the defendant was misled, or was not informed by this notice of what note was referred to in it, or to show that there was any other note of these makers, of this date, for this amount, on which this defendant was an endorser, or to which the description given could possibly apply, it must be held that it sufficiently conveyed to him information that the note now in suit was the one to which it related. It gave the date, the amount, the names of the makers, and by inference the time of payment. If there were other notes, or another note, with which the one described in the notice could have been confounded, there should have been evidence given of that fact. It is not enough that it was possible that such may have been the fact.

The point is not well taken that the case was not submitted to the jury. The case shows that the appellant informed the court that he did not wish to go to the jury on any question. This means more, in the connection in which it is found, than that he did not wish to address the jury. It means that there is no question of fact upon which there is chance for difference.

The judgment appealed from should be affirmed with costs.

Supreme Court of Michigan.

STEPHEN CUTTER v. ZOROASTER BONNEY ET AL.

An innkeeper is not liable for the loss of his guest's goods unless it be by his negligence.

An innkeeper is held to guarantee the good conduct of his servants and all other persons in his house. Hence when the goods of a guest are stolen or otherwise disappear in an unexplained way, the loss is presumed to be in consequence of the innkeeper's negligence.

But where the loss happens by an accidental fire or other casualty coming from without, and of such nature as to negative his negligence, he is not liable.

THIS was an action to recover the value of certain horses, a wagon, &c., destroyed by fire in the barn of defendants, who were innkeepers.

The opinion of the court was delivered by

CAMPBELL, J.—It is found by the court in the case stated that there was no fault or negligence in defendants or their servants, the fire which destroyed the barn and its contents having been